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No. 46

In the Supreme Court of the United States

OCTOBER TERM, 1941

L. V. PARKER, DEPUTY COMMISSIONER, UNITED STATES EMPLOYEES' COMPENSATION COMMISSION, PETITIONER

v.

MOTOR BOAT SALES, INCORPORATED

WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR PETITIONER

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BRIEF FOR PETITIONER

OPINIONS BELOW

The memorandum opinion of the District Court of the United States for the Eastern District of Virginia (R. 54–56) is not reported. The opinion of the Circuit Court of Appeals (R. 69–78) is reported in 116 F. (2d) 789.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on January 6, 1941 (R. 78–79). The

petition for writ of certiorari was filed on April 3, 1941, and was granted on May 12, 1941. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether in an action under Section 21 (b) of the Longshoremen's and Harbor Workers' Compensation Act to enjoin and set aside an award of compensation, a finding of the Deputy Commissioner that the decedent was engaged in maritime employment at the time of his death is conclusive if supported by substantial evidence.

2. If so, whether there is substantial evidence to support the finding in this case.

3. A question raised by respondent despite its failure to have raised it before the Deputy Commissioner or District Court is whether the proceeding is void because the claim for compensation was filed by decedent's widow in her own name and not as "legal representative."

STATUTE INVOLVED

The pertinent provisions of the Longshoremen's and Harbor Workers' Compensation Act, 44 Stat. 1424 (33 U. S. C. secs. 902 (2), (4), 903, 905, 912 (a), (b), 913, 919 (a), (b), 921 (b)) are set forth in the Appendix.

STATEMENT

The decedent, a negro employee of Motor Boat Sales, Incorporated, respondent, was drowned when a motorboat in which he was riding overturned on a navigable river (R. 2, 21, 42, 46). After hearing upon a claim filed by decedent's widow, the Deputy Commissioner awarded compensation under the Longshoremen's and Harbor Workers' Compensation Act (R. 7–9). An action by respondent to set aside and enjoin the award under Section 21 (b) of the Act (R. 1) was dismissed by the District Court (R. 58–59). On appeal, the Circuit Court of Appeals for the Fourth Circuit reversed (R. 78–79).

The facts are as follows:

The respondent was engaged in the city of Richmond, Virginia, in the business of selling maritime supplies, outboard motors, and small boats (R. 21, 50). The decedent, George Armistead, was employed by respondent as a janitor, porter, and general handy man (R. 25, 28, 35, 45, 49).

On August 8, 1938, the date decedent was drowned, the mechanic and the store manager-treasurer employed by respondent, decided to have two of respondent's outboard motors taken to the James River in order to test them on a privately owned boat which had been shown to them earlier in the day (R. 36, 37, 40). The purpose of testing the motors, apparently, was to interest the owner of the boat in buying one of them (R. 39–40, 44).

The mechanic's helper, who was a white man named Cooper, and decedent were sent to the river with the motors (R. 28, 36, 40, 42, 45). According to witnesses called by respondent, decedent had instructions to assist Cooper in unloading the motors from respondent's trailer, attaching them to the boat, and putting them back in the trailer after the tests (R. 36, 40, 45). Decedent was not told to stay off the boat (R. 38, 40, 46–47), although more than eight months previously respondent had issued general instructions, apparently applicable to all its employees, not to get on boats in the water (R. 49–50).

Upon arriving at the river, decedent assisted in attaching one of the motors to the boat, which was on the bank, and, after helping to put the boat in the water, accompanied Cooper and the owner of the boat and his brother on a testing trip (R. 42–44, 46). Following this trip, the motor was taken off and the other one was attached, decedent assisting from inside the boat, which, except for the stern, remained in the water (R. 43–44, 46–47). Cooper and decedent then took a second trip, without the other two men, "To try the motor out and see how it operated" (R. 43, 46–47). Cooper drove and decedent sat in the front seat and kept a lookout, which was helpful to Cooper, since the water was muddy (R. 47). In the course of the trip, the boat struck something and overturned and decedent was drowned (R. 2, 27, 42, 46). Cooper had

not instructed decedent either to stay out of or to get in the boat on either trip (R. 42, 46–47).

So much is undisputed. In addition, there was evidence that on at least one occasion respondent had taken a prospective customer for a boat ride on navigable water for the purpose of interesting him in buying a cruiser (R. 24). There was also testimony that from time to time respondent would send its mechanic to repair ignitions or otherwise service customers' boats on navigable water if they "needed anything," the mechanic sometimes accompanying the customer on test trips in order to "adjust the carburetor or anything like that" (R. 24–25, 31–34). The mechanic testified that on the date in question he either told Cooper "to take George (decedent) or I told George to go and help" (R. 40). Finally, there was evidence that customarily when decedent was sent out from the store he was subject to "orders" and, supposedly, would be subject to the orders of respondent's white employees (R. 29).

The Deputy Commissioner found, *inter alia*, that Cooper was decedent's superior and that decedent was to assist him; that decedent's services in acting as a lookout were helpful to Cooper and were tacitly approved and acquiesced in by him; that they were in furtherance of respondent's interests and not for pleasure; that decedent acted as would be expected of a colored helper under the circumstances; and that on occasions respondents me-

chanics went aboard vessels, serviced them, and tested ignitions on trips on navigable waters (R. 8). The Deputy Commissioner further found that the death arose out of and in the course of the employment, that it occurred upon navigable waters, and that decedent was engaged in "maritime employment" at the time of his death (R. 8). Accordingly, the Deputy Commissioner made an award of compensation (R. 8–9).

Thereafter, pursuant to Section 21 (b) of the Act, respondent filed suit in the United States District Court for the Eastern District of Virginia to enjoin and set aside the award (R. 1). The District Court dismissed the complaint (R. 58). It held, in substance, that the finding of the Deputy Commissioner that the death arose out of and in the course of decedent's employment was conclusive, since supported by evidence, that the other findings, including, apparently, the finding that decedent's employment was maritime, were supported by evidence, and that the Virginia Workmen's Compensation Act is not and could not be made applicable (R. 55–56).[1]

On appeal the court below reversed the decree of the District Court and remanded the cause with

[1] The Virginia Workmen's Compensation Act, as amended in 1938, excepts from its coverage employers with less than eleven employees regularly in service. 1940 Supp. to Va. Code of 1936, Title 16, Chap. 76A, § 1887 (15). There was testimony that respondent had only six employees on the day decedent was drowned (R. 21.)

instructions to enter judgment for respondent (R. 78–79). It held that decedent's employment at the time of death was "local," not maritime (R. 72, 79). It therefore ruled that although the Virginia compensation statute was inapplicable to respondent because respondent employed less than the minimum number of persons specified in that Act, compensation could validly be provided by state law (R. 73, 78). The court accordingly held that the award was invalid because of the provision of Section 3 (a) of the Act specifying that compensation is payable under the Act only "if recovery * * * through workmen's compensation proceedings may not validly be provided by state law" (R. 72, 78). In reaching this decision, the court concluded that in view of respondent's general instruction not to go aboard boats on navigable waters, Cooper's "negative acquiescence" in the decedent's presence in the boat was not a sufficient basis for holding that the decedent was engaged in maritime employment (R. 77).

SPECIFICATION OF ERRORS

The Circuit Court of Appeals for the Fourth Circuit erred:

1. In undertaking to determine, independently of the Deputy Commissioner's findings, whether at the time of his death decedent was engaged in maritime employment.

2. In failing to hold that the findings of the Deputy Commissioner that decedent was engaged, at

the time of his death, in maritime employmer were supported by substantial evidence and, ther fore, conclusive.

3. In holding that decedent's employment at t time of his death was rather local than maritim and that a state compensation law could valid provide recovery for his death.

4. In failing to hold that the finding of t Deputy Commissioner that decedent's death aro out of and in the course of his employment w supported by substantial evidence and, therefo conclusive.

5. In holding that decedent's death did not ari out of and in the course of his employment.

SUMMARY OF ARGUMENT

I

Section 3 (a) of the Longshoremen's Act pr vides that compensation may not be secured und the Act if recovery through workmen's compens tion proceedings may validly be provided by sta law. Under the decisions of this Court that que tion depends on the nature of the employment the time of the injury. If the employment nonmaritime, the matter is one of "local concern and subject to state regulation. If, however, t locale of the injury and the employment are bo maritime, the application of a state act is preclude This is so despite that the employee's usual duti are on land and that the vessel on which he is i

jured is used solely in local intrastate operations in connection with a local business on land.

II

The court below treated the question whether decedent was engaged in maritime employment as one for its own independent determination, whereas it should have held that the findings of the Deputy Commissioner, supported by substantial evidence, were conclusive.

A. Under Section 21 (b) of the Act, providing for judicial review of compensation awards "if not in accordance with law," the deputy commissioner's findings of fact are conclusive if supported by substantial evidence, including his findings determining issues of statutory coverage. *Voehl* v. *Indemnity Ins. Co.*, 288 U. S. 162, 166; *South Chicago Co.* v. *Bassett*, 309 U. S. 251.

The validity of this limitation of judicial review in cases involving the provision in controversy cannot be doubted. The admiralty jurisdiction conferred by Article III, from which the power of Congress to legislate on maritime subjects is implied, extends to all injuries on navigable waters. As the Congress was thus at liberty to include or exclude cases to which state acts might be applied, it may commit to an administrative agency the authority to determine the question whether the statutory exception is applicable.

Shields v. *Utah Idaho R. Co.*, 305 U. S. 177, 180, 184–185.

B. In the *Vochl* case, *supra*, the Court held that the findings of the deputy commissioner on the question whether the injury there involved arose out of and in the course of the employment were conclusive since supported by substantial evidence. The crucial question determined by the Deputy Commissioner in the instant case is, in substance, the nearly identical one of fact whether decedent was acting within the scope of his employment when drowned. In the undisputed circumstances, there can be no question that the boat in which decedent was riding was within the maritime jurisdiction and that the work in which the decedent was engaged at the time was also maritime. This is equally true whether the work be viewed as in aid of the navigation of the vessel or as relating to the installation of a motor. Whether decedent's employment was maritime depends, therefore, on whether his work was within the scope of his employment. The findings of the Deputy Commissioner on this issue are supported by substantial evidence and are conclusive.

C. If we are wrong in our contention that the undisputed circumstances permit of no doubt that the work in which decedent was engaged was maritime in character, the finding of the Deputy Commissioner that decedent was engaged in maritime employment, nevertheless should be treated as con-

clusive, since not arbitrary or unsupported by substantial evidence.

1. The consequence of allowing an independent review on the question of the character of the employment in cases under the Act would be, in numerous instances, to encourage protracted litigation and thus prevent the expeditious disposal of claims. For while often the answer to the question is clear from decisions of this Court in cases involving similar facts, there are many borderline cases which are without close precedent. The confusion in the decisions reflects the impossibility of evolving a rule of law by which to determine with reasonable certainty whether the employment in such cases is maritime or local.

2. Sections 19 and 21 (b), construed in the light of the purpose of Congress to provide a "prompt" and "inexpensive" (*Crowell* v. *Benson*, 285 U. S. 22, 46) method for the disposition of claims, and in the light of the scope of review of determinations of other administrative agencies, require that the deputy commissioner's determination as to the character of the employment be treated as one of fact and be held conclusive when supported by substantial evidence.

III

The contention that the proceeding is void because the claim for compensation was filed by decedent's widow in her own name and not as

"legal representative" is not properly before the Court, since not raised before the Deputy Commissioner, and is, in any event, without merit.

ARGUMENT

I

THE QUESTION WHETHER COMPENSATION MIGHT VALIDLY BE PROVIDED BY STATE LAW DEPENDS UPON WHETHER THE DECEDENT WAS ENGAGED IN MARITIME EMPLOYMENT AT THE TIME OF HIS DEATH

The Longshoremen's and Harbor Workers' Compensation Act was enacted (1927) as a consequence of the decisions of this Court (*Southern Pacific Co.* v. *Jensen*, 244 U. S. 205; *Knickerbocker Ice Co.* v. *Stewart*, 253 U. S. 149; *Washington* v. *Dawson & Co.*, 264 U. S. 219) that the grant of admiralty jurisdiction in Article III of the Constitution contemplated uniformity and precluded the application of state workmen's compensation laws to injuries suffered by persons engaged in maritime employment on vessels in navigable waters. See *Noguera* v. *N. Y., N. H. & H. R. Co.*, 281 U. S. 128, 131, 135–136. By Section 3 (a) Congress limited the coverage of the Act to instances in which "recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law." In so doing Congress evidently intended to leave to the states such cases as might fall within the "local concern" rule, which this Court had adopted (*Grant Smith-Porter Co.* v. *Rohde*, 257 U. S. 469, and cases *infra*, pp. 13–14)

as an exception to or limitation upon the requirement of uniformity announced in the *Jensen* case, *supra*. See *Crowell* v. *Benson*, 285 U. S. 22, 39–40; and footnote 6, *infra*, pp. 18–19.

Whether an injury occurring on navigable waters is a matter of "local concern" so as to be subject to state power depends on whether the employment at the time of the injury has a "direct" relation to navigation or commerce, as had been held by this Court prior to the passage of the Act. Where the employment at the time of the injury, as well as the locale of the injury, is maritime the relation is deemed direct. *Great Lakes Co.* v. *Kierejewski*, 261 U. S. 479, 480–481 (boiler maker engaged in repair work on completed scow moored in navigable waters); *Robins Dry Dock Co.* v. *Dahl*, 266 U. S. 449, 457 (workman engaged in repairing completed steamer moored in navigable waters); *Northern Coal Co.* v. *Strand*, 278 U. S. 142, 144 (stevedore unloading vessel tied to dock); *Baizley Iron Works* v. *Spun*, 281 U. S. 222, 230, 232 (employee of iron works engaged in painting completed vessel tied to dock); *Liability Assurance Co.* v. *Cook*, 281 U. S. 233, 236 (employee of Ford Motor Company unloading ship). The relation has been held indirect or incidental, however, where, although the locale may have been maritime, the employment was nonmaritime. *Grant Smith-Porter Ship Co.* v. *Rohde*, 257 U. S. 469, 476 (carpenter constructing uncompleted vessel launched on navigable

waters); *Millers' Underwriters* v. *Braud*, 270 U. S. 59, 64–65 (diver employed by shipbuilding company engaged in removing timbers of abandoned ways which had become an obstruction to navigation)[2]; *Alaska Packers Asso.* v. *Accdt. Comm.*, 276 U. S. 467, 469 (employee standing on shore endeavoring to push fishing boat into water to float it to nearby dock for winter storage); *Sultan Ry. Co.* v. *Dept. of Labor*, 277 U. S. 135, 137 (employees assembling logs for towage or breaking up booms after towage).[3] See *London Co.* v. *Industrial Comm'n*, 279 U. S. 109, 121; *Robinson*, Admiralty (1939), p. 103.

If the employment at the time of injury is maritime, it is immaterial that such maritime work was temporary or that the man's usual employment was on land (*Northern Coal Co.* v. *Strand*, *supra*, 144; *Liability Assurance Co.* v. *Cook*, 281 U. S. 233, 236; *Buren* v. *Southern Pacific Co.*, 50 F. (2d) 407 (C. C. A. 9th); *St. John* v. *Thomson*, 108 Vt. 66; *Dawson* v. *Jahncke Dry Docks*, 137 So. 376 (Ct. of App., La.); *Hunt* v. *Basil E. Kenney Lumber Co.*, 194 So. 366 (Fla.); and cases *infra*, p. 25); that the employer was not the owner of the vessel in-

[2] Dikes, wharves, piers, and like objects attached to the shore are regarded as extensions of the land. *The Troy*, 208 U. S. 321; *The Panoil*, 266 U. S. 433; *Industrial Comm.* v. *Nordenholt Co.*, 259 U. S. 263, 275; *Smith & Son* v. *Taylor*, 276 U. S. 179, 182.

[3] The local concern rule was applied without opinion in *State Industrial Board* v. *Terry & Tench Company, Inc.*, 273 U. S. 639; *Rosengrant* v. *Havard*, 273 U. S. 664.

volved but of a local business conducted on land (*Washington* v. *Dawson & Co.*, 264 U. S. 219, 228; *Baizley Iron Works* v. *Span*, 281 U. S. 222); that the vessel was engaged solely in local intrastate commerce (*London Co.* v. *Industrial Comm'n*, 279 U. S. 109, 124); that it was not engaged in general commerce, but was used only locally in connection with a business on land (*Spencer Kellogg Co.* v. *Hicks*, 285 U. S. 502, 506, 514); or that the state compensation act is elective and the employer has voluntarily insured under it. *Liability Assurance Co.* v. *Cook*, 281 U. S. 233; *Baizley Iron Works* v. *Span*, 281 U. S. 222. Cf. *Grant Smith-Porter Co.* v. *Rohde*, 257 U. S. 469.[4]

Several of the lower federal courts have indicated that a case might fall within the "local con-

[4] The suggestion in the opinion below (R. 78) that the employer could not have been expected to insure against the risk of decedent's drowning is without substance. As set forth in the Statement (p. 3), the defendant was engaged in the business of selling boats, motors, and maritime supplies. As a normal incident of such a business, the defendant's mechanics went on the water to test or repair motors (R. 24-25, 31-34). The respondent should obviously have anticipated the risk of injury to his employees while engaged in such duties and could have insured against injury to any of its employees without difficulty. Indeed, under the provisions of Section 2 (4) and 32 (a), respondent had the duty of insuring under the Act, as have all employers one or more of whose employees are engaged "in maritime employment, in whole or in part, upon the navigable waters of the United States." We are informed through the United States Employees' Compensation Commission that laundries, grocery, telegraph companies, and other concerns which conduct their business principally on land but which perform

cern" exception notwithstanding that the employment was maritime. *New Amsterdam Casualty Co.* v. *McManigal*, 87 F. (2d) 332, 334 (C. C. A. 2d); *Sunny Point Packing Co.* v. *Faigh*, 63 F. (2d) 921, 923 (C. C. A. 9th). But the controlling decisions of this Court already cited are to the contrary. In each of the cases in which the Court held that the "local concern" doctrine was applicable, including *Sultan Ry. Co.* v. *Dept. of Labor*, *supra*, which contains a *dictum* relied on by the above-mentioned lower courts, the employment was nonmaritime.[5] See *London Co.* v. *Industrial Comm'n.*, 279 U. S. 109, 121.

While the test of what constitutes maritime employment is admittedly difficult in borderline in-

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occasional services on board vessels, take out insurance under the Act for all employees, the premium being determined by a pay-roll audit showing the percentage of time spent by the employee in performing maritime services.

[5] In the *Sultan Ry.* case the Court said (277 U. S. at 137), "It is settled by our decisions that where the employment, although maritime in character, pertains to local matters, having only an incidental relation to navigation and commerce, the rights, obligations and liabilities of the parties, as between themselves, may be regulated by local rules which do not work material prejudice to the characteristic features of the general maritime law or interfere with its uniformity."

However, the Court did not state that the particular employment there involved was maritime, and in the *London Co.* case, *supra*, later decided, it expressly said that the employment in the *Sultan Ry.* case clearly "had only an incidental relation to navigation" and "was not maritime" (279 U. S. at 121).

stances without close precedent, even greater difficulties would be encountered if, as the lower federal court decisions cited suggest, the coverage of the Act were made to turn on the vague question whether, in the particular case, the application of a state statute would work a material prejudice to the characteristic features of the maritime law or interfere with its uniformity. In *Danielsen* v. *Morse Dry Dock & Repair Co.*, 235 N. Y. 439, where the employment was maritime and the state law, therefore, inapplicable, the court said (per Judge Cardozo, at 443):

> The service here was maritime. * * * the decision in *Grant-Smith-Porter Co.* v. *Rohde* * * * does not mean that the court in every case is to weigh the comparative merits of uniformity and diversity, and decide for or against the statute as the balance may incline to one side or the other. That would be to introduce an element of uncertainty, productive of litigation and hardship almost without limit. Neither workman nor employer would know his rights and remedies until the final word had been spoken by the last appellate court. Too often the Statute of Limitations would then bar the substitution of the right choice for the wrong one.

For these reasons, we submit that if in the instant case the decedent was engaged in maritime employment at the time he was drowned, as was found by the Deputy Commissioner (R. 8), com-

pensation could not validly be provided by state law and the Longshoremen's Act applies. In taking this position, however, we do not mean that, as an original matter, we would agree with the doctrine of the *Jensen* case. We mean only that, accepting the doctrine as established, as did Congress, the maritime employment test is controlling with respect to the proper application of the "local concern" exception to the Act.

That Congress may well have had the maritime employment test in mind when it adopted the Act is indicated, first, by the fact noted in *Crowell* v. *Benson*, 285 U. S. 22, at 39, that it "evidently had in view the decisions of this Court with respect to the scope of the exclusive authority of the national legislature"; and secondly, by the fact that in Section 2 (4) it defined an "employer", who is required to insure under the Act (Sec. 32 (a)), as one "any of whose employees are employed in maritime employment, in whole or in part, upon the navigable waters of the United States * * *."[6]

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[6] The legislative history shows that the framers of the Act and Congress had the decisions of this Court in mind, but, apart from that, it affords little light on the question whether Congress intended the maritime employment test to govern. The bill, as first introduced defined an "employer" as one engaged "in any employment covered by this Act," and provided that the Act should apply to "any employment performed on a place within the admiralty jurisdiction of the United States, except employment of local concern and of no direct relation to navigation and com-

Congress seems, therefore, to have accepted the decisions of this Court marking out the boundary line between the employments which state compensation acts could cover, and those which only a federal act could cover. The provision in Section 2 (4), restricting the coverage of the federal act to those whose employees are "in maritime employment, in whole or in part, upon the navigable waters of the United States" and the provisions of Section 3, limiting compensation to cases where "recovery * * * may not validly be provided by state law" were apparently designed as co-

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merce; * * *." S. 3170, H. R. 9198, Art. I, Sec. 3, 69th Cong., 1st Sess. In the hearings before the subcommittee of the Senate Judiciary Committee (p. 95) and before the House Judiciary Committee (p. 65) private opponents of the bill objected to this latter provision as being vague and productive of litigation. The Senate Judiciary Committee reported an amended bill defining an "employer" as one "any of whose employees are employed in whole or in part upon the navigable waters of the United States * * *" and containing a coverage provision similar to that finally adopted. S. R. No. 973, 69th Cong., 1st Sess. In the hearings before the House Judiciary Committee on this amended bill, certain private witnesses objected that the definition of "employer" was so broad as to include employers of persons, such as Western Union messenger boys, casually on navigable waters (pp. 179-180, 196-197). A representative of the American Steamship Owners' Association suggested that the words "except employment of local concern and of no direct relation to navigation and commerce" should be added to the definition (p. 180). However, the Committee reported the bill with an amendment adding the phrase "in maritime employment," which appears in the bill as finally enacted. H. R. No. 1767, 69th Cong., 2d Sess.

extensive categories. If this be so, the decisions of this Court in the *Jensen* and subsequent cases might well be regarded as having been received into the Act, crystallized into the definition found in section 2 (4). In this view, whatever the soundness of the *Jensen* case and its successors, a judicial departure from the doctrine announced in them would apparently be in conflict with the terms of the Act, whether or not in other instances affecting maritime affairs the doctrine of the *Jensen* case were to be overruled, or the "local concern" exception extended. Compare *Liability Assurance Co. v. Cook*, 281 U. S. 233, 237 (concurring opinion of Mr. Justice Stone).

II

THE QUESTION WHETHER DECEDENT WAS ENGAGED IN MARITIME EMPLOYMENT AT THE TIME OF HIS DEATH IS ONE ON WHICH THE FINDINGS OF THE DEPUTY COMMISSIONER, BEING SUPPORTED BY SUBSTANTIAL EVIDENCE, ARE CONCLUSIVE

The Deputy Commissioner found that decedent's presence and assistance on the boat on the fatal trip was tacitly approved by decedent's immediate superior, that decedent was performing service for respondent, that the death arose out of and in the course of decedent's employment, and that the employment at the time of death was maritime (R. 7, 8). The District Court held, in substance, that these findings were supported by the evidence and were therefore conclusive (R. 55, 59). The court below, however, as already indicated (*supra*, p.

7), made independent findings, which were contrary to those of the Deputy Commissioner.[7] It did so, apparently, without holding that the latter were unsupported by substantial evidence.

In thus failing to accord finality to the findings of the Deputy Commissioner if supported by substantial evidence, as we shew hereinafter that they are (*infra*, pp. 26–27), the decision of the court below contravenes the provisions and policy of the Act, decisions of this Court under the Act, and well-settled principles with respect to the proper scope of judicial review of administrative determinations in general. It was for this reason that certiorari was sought (Pet. 6–11). Cf. *Labor Board* v. *Waterman S. S. Co.*, 309 U. S. 206.

A. THE FINDINGS OF THE DEPUTY COMMISSIONER, IF SUPPORTED BY SUBSTANTIAL EVIDENCE, ARE CONCLUSIVE ON ALL ISSUES OF FACT, INCLUDING THOSE ON WHICH THE STATUTORY EXCEPTIONS TO THE COVERAGE OF THE ACT DEPEND

Section 19 of the Act, in providing for the filing of a "claim for compensation," specifies that "the deputy commissioner shall have full power and authority to hear and determine all questions in respect of such claim." Section 21 (b) provides

[7] After having put the question "Was Armistead engaged in maritime employment at the time of his death so that a recovery may be had under the Act?", the court found, *inter alia*, that "Armistead's employment at the time of his death was strictly local" (R. 72) and pertained to matters "having only an incidental relation to navigation and commerce" (R. 73).

that a compensation order may be suspended or set aside through injunction proceedings instituted in the federal district courts "if not in accordance with law". By this section the review of the courts is limited to questions of law which, of course, include the question whether the deputy commissioner's findings of fact are supported by substantial evidence. Cf. *Voehl* v. *Indemnity Ins. Co.*, 288 U. S. 162, 166, 169. If they are so supported, they are conclusive notwithstanding that they relate to the "coverage" of the Act, as was held in *South Chicago Co.* v. *Bassett*, 309 U. S. 251, 258, which involved the question whether the decedent there was a "member of a crew" excepted from the coverage of the Act by paragraph (a) (1) of Section 3. See also cases *infra*, pp. 34–35.

There is clearly no constitutional objection to according finality to the deputy commissioner's adequately supported findings of fact on issues of coverage, such as that here presented, not involving what in *Crowell* v. *Benson*, 285 U. S. 22, 54–55 were termed constitutional "jurisdictional" facts.*

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* In *Crowell* v. *Benson*, *supra*, hitherto relied on by respondent, the Court, to avoid constitutional doubts, construed the Act to permit an independent judicial determination of so-called constitutional "jurisdictional" facts. But such facts were limited to the questions whether the injury occurs upon the navigable waters of the United States and whether the relationship of employer and employee exists at the time of

The provision of Section 3 (a) excepting claims from the coverage of the Act where recovery may be provided by state law is wholly statutory and is not required by the Constitution. The grant of judicial power in cases of "admiralty and maritime jurisdiction" (Art. III), from which the power of Congress to legislate on maritime subjects is implied, extends to all injuries occurring on navigable waters. *Grant Smith-Porter* v. *Rohde*, 257 U. S. 469, 477; *Smith & Son* v. *Taylor*, 276 U. S. 179, 181; *London Co.* v. *Industrial Comm'n*, 279 U. S. 109, 120. The question whether any claim is within the exception of Section 3 (a) may therefore be committed to the primary determination of an administrative agency. *Shields* v. *Utah Idaho Central R. Co.*, 305 U. S. 177, 180, 184–185; *South Chicago Co.* v. *Bassett*, 309 U. S. 251, 258.

In the *Shields* case, this Court had before it a determination of the Interstate Commerce Commission that a carrier was not an interurban electric railway within the provisions of the Railway

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the injury, the answers to which were considered as determinative of the constitutional power of Congress. Since neither of those questions is disputed in the instant case and since the concept of "jurisdictional" facts has not been extended, it cannot be said that *Crowell* v. *Benson* is opposed to our contention here. On the contrary, the opinion of the Court affords affirmative support for our contention. 285 U. S. at 46–47.

Labor Act excluding such railways from the scope of that Act. The Court said (305 U. S. at 180):

> As Congress was free to establish the categories which should be excepted, Congress could bring to its aid an administrative agency to determine the question of fact whether a particular railroad fell within the exception, and Congress could make that factual determination, after hearing and upon evidence, conclusive. * * *

And later the Court said (305 U. S. at 184–185):

> As Congress had constitutional authority to enact the requirements of the Railway Labor Act looking to the settlement of industrial disputes between carriers engaged in interstate commerce and their employees, and could include or except interurban carriers as it saw fit, no constitutional question is presented calling for the application of our decisions with respect to a trial *de novo* so far as the character of the respondent is concerned. * * *

B. THE UNDISPUTED FACTS SHOW THAT DECEDENT WAS ENGAGED IN MARITIME EMPLOYMENT, IF ACTING WITHIN THE SCOPE OF HIS EMPLOYMENT, AND THAT ISSUE IS ONE OF FACT UPON WHICH THE DEPUTY COMMISSIONER'S FINDINGS ARE CONCLUSIVE, SINCE SUPPORTED BY SUBSTANTIAL EVIDENCE

In *Voehl* v. *Indemnity Ins. Co.*, 288 U. S. 162, 166, the Court held that the deputy commissioner's findings, supported by substantial evidence, were conclusive on the issue whether the injury there involved arose out of and in the course of the

employment.[2] The issue here is, in substance, the nearly identical one whether decedent was acting within the scope of his employment. For in the undisputed circumstances (*supra*, pp. 3–5), there can be no doubt that the boat in which decedent was riding was on navigable water within the maritime jurisdiction, and that his work at the time, whether regarded as being his particular activity as lookout or his general activity in assisting in the attachment and testing of the motors, was maritime in character. Cf. *London Co.* v. *Industrial Comm'n.*, 279 U. S. 109; *Lawson* v. *Maryland Casualty Co.*, 94 F. (2d) 193 (C. C. A. 5th); *Wheeler Shipyard* v. *Lowe*, 13 F. Supp. 863 (E. D., N. Y.), affirmed without opinion, 82 F. (2d) 1022 (C. C. A. 2d); *Wood Towing Corp.* v. *Parker*, 76 F. (2d) 770 (C. C. A. 4th); *St. John* v. *Thomson*, 108 Vt. 66. The testing of a motor on a completed vessel upon navigable waters clearly has as direct a relation to navigation and hence is as "maritime" as the repair (*Great Lakes Co.* v. *Kierejewski*, 261 U. S. 479), or reconditioning (*New Bedford Dry Dock Co.* v. *Purdy*, 258 U. S. 96) of such a vessel.

Accordingly, as the work in which decedent was engaged at the time of death was maritime, his employment was maritime if the work was within

[2] Section 2 (2) of the Act defines an "injury" covered by the Act as one "arising out of and in the course of employment."

the scope of his employment. This question would seem to be no less one of fact than was the question in the *Vochl* case. The issue there was said to turn "on the general nature and scope of the employee's duties, the particular instructions he had received, and the practice which obtained as to work in extra hours or on Sunday, and the purpose of the journey in which he was injured." 288 U. S. at 166. Here the issue correspondingly turns on the facts with respect to decedent's general duties as handyman, the particular instructions he had received, the purpose of his accompanying Cooper on the trip on the river, the service performed by him in acting as look-out, the relationship between him and Cooper, and Cooper's acquiescence in or approval of his presence in the boat.

That the record contains ample evidence to support the deputy commissioner's findings on these matters sufficiently appears from the references in the Statement (*supra*, pp. 3–5). The evidence there summarized permitted the Deputy Commissioner to conclude that the decedent's instructions on the day in question authorized him to assist, or contemplated that he would assist, Cooper in such manner as Cooper might direct; that Cooper was authorized to go upon the water to test the motor; that he approved the assistance given by the decedent; and that the respondent's prior instruction not to go on the water was general and had been

often disregarded with the respondent's tacit approval. Cf. *Bull Insular Line, Inc.*, v. *Schwartz*, 23 F. Supp. 359 (E. D. N. Y.).

The court below, determining the facts independently, apparently concluded that decedent was not acting within the scope of his employment for the reason that he departed from the general instruction (R. 73, 77). But since there was evidence from which the Deputy Commissioner could have inferred that decedent's presence and assistance in the boat was authorized by Cooper acting for respondent or, at least, that decedent reasonably believed that he was acting within the scope of his duties and in furtherance of respondent's business, the existence of the general instruction may not be accorded decisive weight. The issue as to whether decedent was acting in the scope of his employment so as to be protected by the Act should not be made to turn on the technical learning which has grown about the doctrine of *respondeat superior*. Cf. *International Association of Machinists* v. *Labor Board*, 311 U. S. 72, 80. Even if those rules were controlling, however, the Deputy Commissioner was justified in not treating the violation of the general instructions as determinative. Cf. *Singer Manufacturing Co.* v. *Rahn*, 132 U. S. 518, 522–523; *Maryland Casualty Co.* v. *Cardillo*, 107 F. (2d) 959 (App. D. C.); *Capital Transit Co.* v. *Hoage*, 84 F. (2d) 235 (App. D. C.); *Matter of Corrina* v. *De Barbieri*, 247 N. Y. 357; *Western*

Union Telegraph Co. v. *Hill*, 67 F. (2d) 487, 488 (C. C. A. 5th); *Pacific Telephone & Telegraph Co.* v. *White*, 104 F. (2d) 923, 926 (C. C. A. 9th).

C. EVEN IF THE QUESTION WHETHER DECEDENT'S EMPLOYMENT WAS MARITIME IN CHARACTER WERE A DOUBTFUL ONE, THE DETERMINATION OF THE DEPUTY COMMISSIONER SHOULD BE HELD CONCLUSIVE

If we are in error in our contention that under the undisputed facts decedent's work at the time of his death was not so clearly maritime in character as to present no question on that score, the findings of the Deputy Commissioner, based on substantial evidence, nevertheless should have been accorded finality by the court below.

We shall show (1) that the consequence of permitting an independent determination by the courts on questions as to the character of the employment would be to encourage protracted litigation and prevent a "prompt" and "inexpensive" method for the disposition of claims (cf. *Crowell* v. *Benson*, 285 U. S. 22, at 46); and (2) that Sections 19 and 21 (b), construed in the light of the purposes of the Act, exclude such a review.

1. In a large number of cases the question whether the employment was maritime is controlled by decisions of this Court and no difficulty is presented. Thus, it is established that the navigation, loading or unloading, supplying or repair of a completed vessel, which are all traditionally maritime in character, are not matters of local concern. *London Co.* v. *Industrial Comm'n*, 279

U. S. 109; *Baizley Iron Works* v. *Spun*, 281 U. S. 222; *Liability Assurance Co.* v. *Cook*, 281 U. S. 233. Likewise, it is established that employment in the construction of an uncompleted vessel is nonmaritime (*Grant Smith-Porter Co.* v. *Rohde*, 257 U. S. 469) and that employment on docks or other recognized extensions of the land is similarly subject to state regulation. *Smith & Son, Inc.* v. *Taylor*, 276 U. S. 179; and other cases cited *supra*, p. 14, footnote 2.

In many borderline cases, however, such as those cited in the paragraphs next succeeding, there is no close precedent to determine the question whether the local concern doctrine is applicable and a difficult appraisal of the particular facts is necessary. No rule of law sufficiently definite can be evolved which will permit the prompt and inexpensive disposition of compensation claims in such cases if the question of the character of the employment must be determined independently by the courts.

In *Ex parte Rosengrant*, 213 Ala. 202, and *Ex parte Havard*, 211 Ala. 605, both affirmed without opinion in *Rosengrant* v. *Havard*, 273 U. S. 664, where a lumber inspector was injured while on board a schooner for the purpose of checking a cargo as it was discharged from a nearby barge, the employment was held to be of local concern. In *T. J. Moss Tie Co.* v. *Tanner*, 44 F. (2d) 928 (C. C. A. 5th), however, employment on a barge checking ties which were to be transferred to a boat

for shipment was held to be maritime and not local, because the work had to be done from the boat. The *Rosengrant* case was distinguished on the ground that in that case the employee could have checked the discharged cargo from the dock. See also *Norton* v. *Gulf Refining Co.*, 94 F. (2d) 380 (C. C. A. 3d); cf. *Teahan* v. *Industrial Accident Com.*, 210 Cal. 342.

In *Sunny Point Packing Co.* v. *Faigh*, 63 F. (2d) 921 (C. C. A. 9th), the work of a watchman on a floating fishtrap, which was anchored to the shore, was held to be of local concern. But the same court held that a watchman on a boat being repaired came within the exclusive maritime jurisdiction, distinguishing the *Sunny Point* case on the ground that the fishtrap involved in that case had been anchored and fastened by a long cable to the shore. The attachment of the vessel to the shore was not deemed significant, however, in *State* v. *Missouri Workmen's Compensation Com.*, 181 S. W. (2d) 986 (St. Louis Ct. of Appeal, Mo.), where the work of a mat weaver, employed to weave mats on a barge attached to the shore and to rest the mats on the river bed to control the flow of the river channel for navigation, was held to be maritime, and not local.

In *Travellers' Insurance Co.* v. *Bacon*, 30 Ga. App. 728, the court, in holding that employment of a person engaged in fishing on navigable waters was of local concern, emphasized that the fishing all took place in sight of land. The distance from

the shore was not considered, however, in *Johnson* v. *G. T. Elliott, Inc.*, 152 Va. 121, where the employment of an engineer of a small gasoline boat, used solely for fishing in local waters in connection with a local shellfish packing plant, was held to be maritime and not local.

In *Saltan Ry. Co.* v. *Department of Labor*, 277 U. S. 135, the assembling and breaking up of booms of lumber in connection with the business of a local lumber mill was held to be of local concern. But a contrary result was reached in *Beyerle* v. *Industrial Accident Comm.*, 75 Cal. App. 19, where the employment was similar save that the breaking of the booms involved the operation of an engine on a scow. Contrast also the recent decision in *Klump* v. *Industrial Comm.*, 29 N. E. (2d) 627 (Ohio), with the decision in *St. John* v. *Thomson*, 108 Vt. 66, discussed by the court below (R. 74).

These examples are merely illustrative of the encouragement to protracted litigation which would ensue from construing the Act to allow the independent judicial review as to the character of the employment contended for by respondent. In the past as much as four years has sometimes elapsed between the date of application for judicial review under Section 21 (b) and final disposition in the courts.[10] If payment of compen-

[10] See Brief for the Respondent, p. 31, in *South Chicago Co.* v. *Bassett*, October Term, 1939, No. 262.

sation is stayed by injunction, the claimant, though entitled to recover, may be denied the means of support in the interim. Such delay may make some compromise essential in order that the claimant may receive any effective compensation.[11]

2. When, together with the foregoing considerations, the policy of the Act is weighed in the light of familiar principles of judicial review, it seems evident that Sections 19 and 21 (b) should be construed to deny a review *de novo* of the deputy commissioner's findings with respect to the character of the employment. The problem in the border-line cases above referred to is to determine the "dominant characteristics" of the employment (cf. *Shields* v. *Utah Idaho R. Co.*, 305 U. S. 177, 187) and the scope of review contemplated by the Act in such cases should be determined in accordance with "the obvious purpose of the

[11] In the unreported case of *Charles M. McCormack Lumber Co.* v. *Marshall* (W. D. Wash., July 6, 1937), the employer made application for review under section 21 (b) on October 31, 1932, and an interlocutory injunction was granted on January 28, 1933. On July 6, 1937, more than four years later, the district attorney consented to the entry of an order setting aside the compensation award. The consideration to the claimant for this agreement, if any, is not shown by the court's order. In *Lykes Bros.-Ripley Steamship Co., Inc.* v. *Sheppard* (unreported), decided November 13, 1935, the decree of the District Court (E. D. Tex.) expressly recites the consideration.

legislation to furnish a prompt, continuous, expert, and inexpensive method for dealing with a class of questions of fact which are peculiarly suited to examination and determination by an administrative agency specially assigned to that task." *Crowell* v. *Benson*, 285 U. S. 22, at 46.

Such purpose is clear from the face of the Act. Compensation becomes due fourteen days after the employer has knowledge of the injury (Sec. 14 (b)). Where the right to compensation is controverted and an award is made by a deputy commissioner, a penalty of twenty percent is assessed for failure to make compensation within ten days after payment is due (Sec. 14 (f)). *Candado Stevedoring Corp.* v. *Lowe*, 85 F. (2d) 119 (C. C. A. 2d); *Arrow Stevedore Co.* v. *Pillsbury*, 88 F. (2d) 446 (C. C. A. 9th). If the employer fails to make payment within thirty days after compensation is due, the deputy commisisoner may enter a supplementary order directing payment, on which judgment and execution may be had in the appropriate federal district court (Sec. 18). In order that the burdens, delays, and hazards of litigation may not be used to induce employees to make disadvantageous agreements, any waiver of the right to compensation is forbidden by Congress (Sec. 15 (b)); agreements for compensation without the approval of the Commis-

sion are prohibited (Sec. 16);[12] and the district attorney is directed to appear on behalf of the deputy commissioner and defend compensation orders (45 Stat. 490). To minimize the law's delays, the Act prescribes certain limitations on the granting of interlocutory injunctions staying the payment of compensation (Sec. 21 (b)).

Unless the policy of Congress apparent from all these provisions is to be defeated in a large class of cases, the findings and conclusions of the deputy commissioner with respect to the character of the employment, supported by substantial evidence, should be held conclusive.

It is immaterial that the determination of the character of the employment involves the interpretation of a statute or the application of some relevant legal principle. Where supported by substantial evidence, administrative determinations have been held conclusive with respect to the questions whether a carrier was "an interurban electric railway" excluded from the coverage of the Railway Labor Act (*Shields* v. *Utah Idaho R. Co.*, 305 U. S. 177, 185); whether coal was "bituminous coal" as defined in the Bituminous Coal Conservation Act of 1935 (*Sunshine Coal Co.* v. *Adkins*, 310 U. S. 381, 390, 400); and whether one carrier

[12] Section 8 (i) permits the Deputy Commissioner to approve settlements with the approval of the Commissioner in certain limited classes of cases. Subject to this exception section 16 forbids compromise of claims even with the approval of the Deputy Commissioner or of the Commissioner.

was "directly or indirectly controlled" by another so as to be excepted from the coverage of the Communications Act of 1934. *Rochester Tel. Corp.* v. *United States*, 307 U. S. 125, 145–146. In each of these cases the administrative finding was treated as a "factual determination" (*Shields* v. *Utah Idaho R. Co., supra*, 180) though involving the interpretation of a statute.

The determinations of the Deputy Commissioner under the Longshoremen's Act are entitled to like finality. In *South Chicago Co.* v. *Bassett*, 309 U. S. 251, the deputy commissioner found that an employee was not "a member of a crew" excluded from the coverage of the Act under Section 3. The Court held (at 260) that the application of the provision turned on whether the employee was "naturally and primarily on board to aid in her navigation" and sustained the finding as one of fact supported by substantial evidence. No reason is seen for a different standard of judicial review where the inquiry is whether the employment has "direct relation to commerce and navigation." *Northern Coal Co.* v. *Strand*, 278 U. S. 142, 144. The absence of any constitutional reason for a review *de novo* has already been shown. *Supra*, pp. 22–24).[13]

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[13] It is even arguable that, in a case such as this, the Constitution, as distinct from the Act, would not require any review whatever of the deputy commissioner's conclusion on the issue whether a state act validly could apply. For since Congress might constitutionally have provided that the Act

It is not contended, of course, that every finding of a deputy commissioner on an issue of statutory coverage is conclusive. Under the Act the finding must be consistent with established principles and supported by substantial evidence. A finding, on the one hand, that the repair of a completed vessel is nonmaritime and local or, on the other, that the construction of a new vessel or the operation of a land business, having no relation to navigation or commerce, is maritime, could not be supported. But where the evidence discloses some relation to both a vessel and to a nonmaritime object or business and it is necessary to determine whether the "dominant characteristics" of the employment are maritime or local, a "rational basis" may be found for either conclusion. Cf. *Rochester Tel. Corp.* v. *United States*, 307 U. S. 125, 146. In such circumstances, the established principles regulating the scope of judicial review and the evident purpose of the Longshoremen's Act both

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should be applicable to all injuries occurring on navigable waters (cases, *supra*, p. 23), respondent has no constitutional right not to be covered by the Act, and, except with respect to constitutional rights, due process of law does not require that there be a judicial determination of questions of law any more than of questions of fact. *Reetz* v. *Michigan*, 188 U. S. 505, 507; *United States* v. *Ju Toy*, 198 U. S. 253; *Passavant* v. *United States*, 148 U. S. 214, 219, 222; and cases collected in the opinion in *Ex Parte Bakelite Corp'n*, 279 U. S. 438, 451-452 and in the concurring opinion of Mr. Justice Brandeis in *St. Joseph Stock Yards Co.* v. *United States*, 298 U. S. 38, 77-81. For reasons stated in footnote 8, *supra*, p. 22, the decision in *Crowell* v. *Benson*, 285 U. S. 22, is inapplicable.

suggest that the determination of the deputy commissioner should be accorded finality.

III

THE CLAIM FOR COMPENSATION WAS PROPERLY FILED BY DECEDENT'S WIDOW IN HER OWN NAME

Respondent, in its brief in opposition to the petition for certiorari, raises the technical objection that, as the claim was filed by decedent's widow in her own name and not as "legal representative" of the decedent, the proceedings are void under Section 5 of the Act. Section 5, dealing with the exclusiveness of the liability of an employer, provides as follows:

> The liability of an employer prescribed in section 4 shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this Act, an injured employee, or his legal representative in case death results from the injury, may elect to claim compensation under this Act, or to maintain an action at law or in admiralty for damages on account of such injury or death. * * *

A sufficient answer to respondent's contention is that it was first made on the appeal to the court below; it was not made before the Deputy Commissioner (see R. 13, 52) or District Court (see R. 1–6). The rule is well established that issues not raised before the Deputy Commissioner are considered as having been waived and cannot be asserted for the first time in the courts. *Maryland Casualty Co.* v. *Cardillo*, 107 F. (2d) 959 (App. D. C.); *Metropolitan Casualty Ins. Co.* v. *Hoage*, 89 F. (2d) 798 (App. D. C.); *Grain Handling Co.* v. *McManigal*, 23 F. Supp. 748 (W. D. N. Y.); *Liberty Stevedoring Company* v. *Cardillo*, 18 F. Supp. 729 (E. D. N. Y.); *Southern Shipping Co.* v. *Lawson*, 5 F. Supp. 321 (S. D. Fla.).

Respondent's argument that this issue is jurisdictional and can be raised at any time is contrary to the decisions of this Court.[14] The question does not go to the jurisdiction of the Deputy Commissioner and courts, but only raises the issue of capacity to sue. In *McCandless* v. *Furland*, 293 U. S. 67, 73–74, Justice Brandeis stated in reference to that question:

> But an objection to the plaintiff's legal capacity to sue will not be entertained if taken, for the first time, in the appellate

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[14] *Chapman* v. *Griffith-Consumers Co.*, 107 F. (2d) 263 (App. D. C.), cited by respondents (Br. in Opp., pp. 41-2) is entirely irrelevant to this issue. It concerns the interpretation of Section 33, and does not touch upon the construction of the term "legal representative."

> court. The rule is of general application and has been applied in the federal appellate courts to a variety of cases. To lack of capacity on the ground of infancy; on the ground that plaintiff was a married woman; on the ground that the husband was not entitled to sue in his own name for the death of his wife; * * * that the father was not entitled to sue for the death of his minor son, * * * The reason for the rule is the broad one that a defect found lurking in the record on appeal may not be allowed to defeat recovery, where the defect might have been remedied, if the objection had been seasonably raised in the trial court.

See also *O'Reilly* v. *Campbell,* 116 U. S. 418, 420; *McLaughlin* v. *United States,* 107 U. S. 526, 528.

In any event, respondent's contention is based on a mistaken construction of the Act. Section 5 deals with the exclusiveness of the employers' liability; it does not determine the proper party to file a claim. Section 12 provides that notice of death may be given "in case of death, by any person claiming to be entitled to compensation for such death or by a person on his behalf," and Section 19 (a) provides that "a claim for compensation may be filed with the Deputy Commissioner in accordance with regulations prescribed by the commission," subject to the provisions of Section 13. Section 13, dealing with the time for filing claims, does not require that a claim must be filed by the

"legal representative." And the claim in this case was filed in accordance with the forms prescribed by the Commission for a claim by a widow. 20 CFR 31.5; Form No. U. S.-262. See appendix B, p. 46.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the judgment of the court below should be reversed.

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OCTOBER 1941.

APPENDIX A

The pertinent provisions of the Longshoremen's and Harbor Workers' Compensation Act, 44 Stat. 424 (33 U. S. C., Secs. 901 *et seq.*) are as follows:

SEC. 2. (2) The term "injury" means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury, and includes an injury caused by the willful act of a third person directed against an employee because of his employment.

* * * * *

(4) The term "employer" means an employer any of whose employees are employed in maritime employment, in whole or in part, upon the navigable waters of the United States (including any dry dock.)

* * * * *

SEC. 3. (a) Compensation shall be payable under this Act in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any dry dock) and if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law. * * *

* * * * *

SEC. 5. The liability of an employer prescribed in section 4 shall be exclusive and in

place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this Act, an injured employee, or his legal representative in case death results from the injury, may elect to claim compensation under this Act, or to maintain an action at law or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, nor that the employee assumed the risk of his employment, nor that the injury was due to the contributory negligence of the employee.

* * * * *

SEC. 12. (a) Notice of an injury or death in respect of which compensation is payable under this Act shall be given within thirty days after the date of such injury or death (1) to the deputy commissioner in the compensation district in which such injury occurred and (2) to the employer.

(b) Such notice shall be in writing, shall contain the name and address of the employee and a statement of the time, place, nature, and cause of the injury or death, and shall be signed by the employee or by some person on his behalf, or in case of death, by any person claiming to be entitled to compensation for such death or by a person on his behalf.

* * * * *

SEC. 13. (a) The right to compensation for disability under this Act shall be barred unless a claim therefor is filed within one year after the injury, and the right to compensation for death shall be barred unless a claim therefor is filed within one year after the death, except that if payment of compensation has been made without an award on account of such injury or death a claim may be filed within one year after the date of the last payment. Such claim shall be filed with the deputy commissioner in the compensation district in which such injury or such death occurred.

(b) Notwithstanding the provisions of subdivision (a) failure to file a claim within the period prescribed in such subdivision shall not be a bar to such right unless objection to such failure is made at the first hearing of such claim in which all parties in interest are given reasonable notice and opportunity to be heard.

(c) If a person who is entitled to compensation under this Act is mentally incompetent or a minor, the provisions of subdivision (a) shall not be applicable so long as such person has no guardian or other authorized representative, but shall be applicable in the case of a person who is mentally incompetent or a minor from the date of appointment of such guardian or other representative, or in the case of a minor, if no guardian is appointed before he becomes of age, from the date he becomes of age.

* * * * *

SEC. 19. (a) Subject to the provisions of section 13 a claim for compensation may be filed with the deputy commissioner in accordance with regulations prescribed by the commission at any time after the first seven

days of disability following any injury, or at any time after death, and the deputy commissioner shall have full power and authority to hear and determine all questions in respect of such claim.

(b) Within ten days after such claim is filed the deputy commissioner, in accordance with regulations prescribed by the commission, shall notify the employer and any other person (other than the claimant), whom the deputy commissioner considers an interested party, that a claim has been filed. Such notice may be served personally upon the employer or other person, or sent to such employer or person by registered mail.

* * * * *

SEC. 21. (b) If not in accordance with law, a compensation order may be suspended or set aside, in whole or in part, through injunction proceedings, mandatory or otherwise, brought by any party in interest against the deputy commissioner making the order, and instituted in the Federal district court for the judicial district in which the injury occurred (or in the Supreme Court of the District of Columbia if the injury occurred in the District). The orders, writs, and processes of the court in such proceedings may run, be served, and be returnable anywhere in the United States. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless upon application for an interlocutory injunction the court, on hearing, after not less than three days' notice to the parties in interest and the deputy commissioner, allows the stay of such payments, in whole or in part, where irreparable damage would otherwise ensue to the employer. The order

of the court allowing any such stay shall contain a specific finding, based upon evidence submitted to the court and identified by reference thereto, that such irreparable damage would result to the employer, and specifying the nature of the damage.

APPENDIX B

Form US-262

UNITED STATES EMPLOYEES' COMPENSATION COMMISSION

Office of Deputy Commissioner ____ Administering Longshoremen's and Harbor Workers' Compensation Act.

LEAVE THIS SPACE BLANK

Case No. _____

Insurance Carrier's No. _____

Claim for Compensation in Death Case by Widow and or Children Under the Age of Eighteen

I hereby make claim for compensation arising out of the death of _____ who died on _____ 192__ at _____, as a result of injury sustained on _____, 192__, at _____ (Place where injury happened and name of vessel) in the employ of _____ (Name of employer) whose address is _____ (Street and number) (City or town) (County)

Deceased left the following children who were under 18 years of age at the time of his death:

NAMES	DATE OF BIRTH

These questions should be answered where the widow is claiming compensation.

Widow was born on _____ (Date) at _____ (Place)

Widow was married to the deceased on _____ day of _____ at _____ (Place where married)

by _____ (Name or title of person performing ceremony)

14 Last physician or hospital _____
(Name and address)

15 Name of undertaker _____ Address_____

16 Amount of undertaker's bill, $_____ Amount paid,

17 if any, $_____.

18 By whom paid _____
(Name) (Address)

Dated this _____ day of _____, 192__ _____
(Signature of claimant)

Address _____

AFFIDAVIT

State of _____,

County of _____, ss:

On this _____ day of _____, A. D. 192__, personally appeared before me the above-named _____ and made oath that the answers by _____ above named and subscribed are true.

[SEAL] _____

Notary Public.

Address _____

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